

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DONNA LYNNE MILLER	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	NO. 00-516
H. WARREN HOGELAND, DISTRICT	:	
JUSTICE and THE COUNTY OF BUCKS	:	

**MEMORANDUM**

BUCKWALTER, J.

July 18, 2000

Presently before this Court is Defendant H. Warren Hogeland, District Justice's ("District Justice Hogeland") Rule 12(b)(6) Motion to Dismiss Plaintiff Donna Lynne Miller's Complaint and Miller's Response thereto. For reasons stated below District Justice Hogeland's Motion will be granted in part and denied in part.

**I. BACKGROUND**

For thirteen years, Miller was employed by Bucks County. She had no history of disciplinary or work performance problems. District Justice Hogeland, District Justice of Bucks County allegedly utilized his position as a supervisor over the Bucks County employees, one of whom was Miller, and created a hostile work place through assaultive conduct and defamatory remarks that labeled Miller "crazy." District Justice Hogeland suggested that Miller seek treatment for he believed that she suffered a mental illness. Miller contends that as a result of District Justice Hogeland's intentional acts, she lost her employment of 13 years and has been permanently branded a "problem employee." Miller asserts that there is no basis in truth for

District Justice Hogeland's accusations, nor is there a justifiable basis for the termination of her employment.

On March 8, 2000, Miller filed her First Amended Complaint alleging causes of action under Title 42 U.S.C. Section 1983 (Count One) and under the Americans with Disabilities Act, Title 42 U.S.C. Section 12101 et seq. and the Pennsylvania Human Relations Act (PHRA) (Count Two). Her third cause of action sounds in state claims of assault (Count Three).

## **II. STANDARD**

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at \*1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). The Court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Nami v. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996).

### **III. DISCUSSION**

#### **A. Count One--Title 42 U.S.C. Section 1983**

To maintain a cause of action under § 1983, a plaintiff must establish: (1) the alleged conduct was committed by a person acting under color of state law and (2) the conduct deprived the plaintiff of rights, privileges and immunities secured by the Constitution or laws of the United States. See e.g., Hicks v. Feeney, 770 F.2d 375, 377 (3rd Cir. 1985). Section 1983 is not a source of substantive rights; it only provides “a method for vindicating federal rights elsewhere conferred.” Graham v. Connor, 490 U.S. 386, 393-94 (1989). Consequently, Section 1983 does not provide “a right to be free of injury wherever the State may be characterized as the tortfeasor,” the plaintiff must show a deprivation of a federally protected right. Paul v. Davis, 424 U.S. 693 (1976).

Count One of Miller’s Complaint asserts that District Justice Hogeland, while serving in a supervisory capacity and as a District Justice, acted under color of state law in depriving Miller of her federal rights, immunities, or privileges. Specifically, Miller contends that District Justice Hogeland deprived her of her “[l]iberty, [p]roperty, [d]ue [p]rocess, [e]qual [p]rotection, [r]eputation, and [s]ubstantive due process, and [sic] as secured by the First, Fourth, Fifth, Sixth, Ninth, and Fourteenth [A]mendments.” Miller appears to be filing her Section 1983 cause of action against District Justice Hogeland in both his individual and official capacities, so I will treat her Complaint as such.

#### **1. Eleventh Amendment and Section 1983**

The Eleventh Amendment bars suit against a District Magistrate in his/her official capacity. Fox v. Lee, No.CIV.A 00-2196, 2000 WL 760318, \*1 (E.D.Pa. June 8, 2000); See e.g.

Edelman v. Jordan, 415 U.S. 651, 663, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). A District Magistrate, in his/her official capacity, is also not a "person" for the purposes of Section 1983. Id.; see also Will v. Michigan Dep't of State Police, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) (holding that an official capacity suit against a state officer is a suit against the office and therefore no different from a suit against the state itself). Therefore, Miller's suit against District Justice Hogeland, in his official capacity, is barred by the Eleventh Amendment and does not fall within the purview of Section 1983. However, as a result of my review of her Complaint and her Response to District Justice Hogeland's Motion to Dismiss, any Section 1983 claim against District Justice Hogeland in his individual capacity survives this stage of the litigation.

**B. Count Two--Americans With Disabilities Act and the PHRA**

In Count Two of her Complaint, Miller contends that both the County of Bucks and District Justice Hogeland discriminated against her as a result of her mental impairment, in violation of the Americans with Disabilities Act, 42 U.S.C. 1201 et seq. ("ADA") and the Pennsylvania Human Relations Act.<sup>1</sup>

Under the ADA:

[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.

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1. The PHRA and ADA are interpreted in a coextensive manner, as they deal with similar subject matter and are grounded on similar legislative goals. Imler v. Hollidaysburg Am. Legion Ambulance Serv., 731 A.2d 169, 173 (Pa.Super.Ct.1999). See also Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir.) (PHRA claim analyzed under Title VII framework), cert. denied, 522 U.S. 914, 118 S.Ct. 299, 139 L.Ed.2d 230 (1997).

42 U.S.C. S 12112(a). A prima facie case under the ADA thus requires proof that the plaintiff is disabled within the meaning of the ADA; that she is a "qualified individual," i.e., that she is otherwise qualified to perform the essential functions of her job, with or without reasonable accommodations by her employer; and, that she has suffered an adverse employment decision as a result of discrimination. Deane v. Pocono Medical Center, 142 F.3d 138, 142, 145 (3d Cir.1998). Courts analyzing ADA claims look to the principles guiding the interpretation and application of Title VII. See Newman v. GHS Osteopathic, Inc., Parkview Hosp. Div., 60 F.3d 153, 157 (3d Cir.1995); see also Fitzpatrick v. Com. of Pennsylvania, 40 F.SUPP..2d 631, 637 (E.D.Pa.1999).

The United States Court of Appeals for the Third Circuit has stated that as a matter of law, Title VII does not afford individual liability. Sheridan v. E.I. Dupont de Nemours and Co., 100 F.3d 1061, 1077-78 (3d Cir.1996) (en banc ), (cert. denied, 117 S.Ct. 2532 (1997)). Thus, because District Justice Hogeland would not be held liable under Title VII, it follows that Miller's ADA and PHRA claims against him must fail as a matter of law.

Accordingly, Miller's ADA and PHRA claims, as they pertain to District Justice Hogeland, are dismissed and judgment is entered in favor of District Justice Hogeland.

### **C. Count Three--State Claims (Assault)**

Miller asserts that District Justice Hogeland assaulted her by "recklessly, purposefully, intentionally, and/or negligently" throwing a telephone at her. Generally, officials and employees of the Commonwealth of Pennsylvania acting within the scope of their duties enjoy the same immunity as the Commonwealth itself. See Moore v. Commonwealth, 538 A.2d 111, 115 (Pa.Cmmw.Ct.1988). Therefore, Commonwealth officials are immune from state law

tort claims unless the General Assembly has specifically waived immunity. See Seymour/Jones v. Shellenberger, 1997 WL 9793 (E.D. Pa., Jan 8, 1997). The Sovereign Immunity Act waives the immunity of the Commonwealth and its officials only in nine narrow categories of negligence cases.<sup>2</sup> See 42 Pa.C.S.A. § 8521-22. Miller's claim against District Justice Hogeland in Count Three does not fit into any of these exceptions. Therefore, if acting within his official capacity, District Justice Hogeland will enjoy sovereign immunity. See Faust v. Dep't of Revenue, 592 A.2d 835, 839 (Pa. Cmmwlth 1991)(intentional torts and civil rights actions are not within the narrow exceptions to sovereign immunity of Commonwealth and its officials).

When determining whether conduct of an employee is within the scope of his/her duties, Pennsylvania courts have applied the Restatement (Second) of Agency § 228, which reads in pertinent part, that "[c]onduct of a servant is within the scope of employment if, but only if:

- (a) it is of the kind he is employed to perform;
- (b) it occurs substantially within the authorized time and space limits;
- (c) it is actuated, at least in part, by a purpose to serve the master; and
- (d) if force is intentionally used by the servant against another,  
the use of the force is not unexpected by the master.

Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits or too little actuated by a purpose to serve the master. See Hass v. Barto, 829 F.SUPP.. 729, 733-34 (M.D.Pa.1993); Natt v. Labar, 117 Pa.Cmmw. 207, 543 A.2d 223, 225 (1988). At this stage of this case, based on the

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2. These include cases involving (1) vehicle liability, (2) medical-professional liability, (3) care, custody or control of personal property, (4) a dangerous condition of Commonwealth real estate, highways and sidewalks, (5) a dangerous condition of Commonwealth highways, particularly potholes or sinkholes, (6) care, custody or control of animals, (7) liquor store sales, (8) National Guard activities, and (9) toxoids and vaccines.

complaint, I must find that District Justice Hogeland did throw a phone at Miller, and infer he did so within the scope of his employment. Therefore, Count Three survives this particular Motion.

#### **IV. CONCLUSION**

As stated previously, District Justice Hogeland's Motion to Dismiss is granted in part and denied in part. Count One is dismissed as it pertains to District Justice Hogeland in his official capacity only, as the Eleventh Amendment bars an official capacity suit against him. Further, Count Two of Miller's Complaint is dismissed, as far as it fails to state a claim upon which relief can be granted under the ADA and the PHRA against District Justice Hogeland. Finally, Count Three of the Complaint survives this Motion, in that, I am unable to determine from the limited record whether or not District Justice Hogeland was acting within the scope of employment when he allegedly threw a telephone at Miller.

An appropriate Order follows.

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JUSTICE and THE COUNTY OF BUCKS	:	

**ORDER**

AND NOW, this 18th day of July, 2000, upon consideration of Defendant H. Warren Hogeland, District Justice's Motion to Dismiss, and Plaintiff Donna Lynne Miller's Response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED in part and DENIED in part.

It is further ORDERED that:

- (1) Count One is DISMISSED as it pertains to Defendant Hogeland in his individual capacity, but not as it pertains to the County of Bucks; and
- (2) Count Two is DISMISSED as it pertains to Defendant Hogeland, but not as it pertains to the County of Bucks.

BY THE COURT:

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RONALD L. BUCKWALTER, J.